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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,607	08/30/2001	Martin C. Flautt	25035A	2480
22889	7590	05/26/2004	EXAMINER	
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			GRAY, JILL M	
			ART UNIT	PAPER NUMBER
			1774	
DATE MAILED: 05/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<p style="text-align: center;"><b>Office Action Summary</b></p>	<b>Application No.</b> 09/943,607	<b>Applicant(s)</b> FLAUTT ET AL	
	<b>Examiner</b> Jill M. Gray	<b>Art Unit</b> 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see amendment, filed April 26, 2004, with respect to the rejection(s) of claim(s) 1-7, 10-28 and 31-38 under 35 U.S.C. 103(a) as being unpatentable over Sage, Jr. 6,436,476 B1 in view of PCT Publication WO 91/15434 (Adizama) and Yamada et al, 4,427,482 (Yamada) and claims 8-9 and 29-30 under 35 U.S.C. 103(a) as being unpatentable over Sage, Jr. '478 in view of PCT Publication WO 91/15434 (Adizama) and Yamada '482, further in view of "EPI-CURE 3253" Product data sheet and Hawley's Condensed Chemical Dictionary, Fourteenth Edition, page 366 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly cited reference.

Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 9, 15, 18-20, 27, 30, and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

More specifically, claims 6 and 27 are indefinite because the limitation that the emulsified epoxy resin comprises emulsified epoxy resin is redundant and not further

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limiting or defining. Accordingly, the metes and bounds for which patent protection is being sought are not clear.

Claims 9 and 30 are indefinite because the language of "the mixed aromatic amine curing agent comprises EPICURE 3253" does not clearly and distinctly identify what the curing agent is comprised of. Also, the language of "said cyanoguanidine curing agent comprises cyanoguanidine curing agent" is redundant and not further limiting or defining. Accordingly, the metes and bounds for which patent protection is being sought are not clear.

Claims 15 and 36 are indefinite because the limitation that the calcium carbonate filler comprises calcium carbonate filler is redundant and not further limiting or defining. Accordingly, the metes and bounds for which patent protection is being sought are not clear.

Claims 18-20 are indefinite because claim 18 sets forth the process step of "introducing the filler in a first amount..." This language renders claims 18-20 indefinite because it implies that there is a second amount of filler that is introduced to the aqueous treatment bath. Accordingly, the metes and bounds for which patent protection is being sought are not clear.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Applicant is advised that should claims 4 and 25 be found allowable, claims 5 and 26 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10-28 and 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Das et al, 4,745,028 (Das) in view of PCT Publication WO 91/15434 (Adizama) and Yamada et al, 4,427,482 (Yamada).

Das teaches chemically treated reinforcing fibers wherein said chemically treated fibers are treated with an aqueous treating composition comprising an epoxy polyurethane copolymer, a curing agent, thickener, and water, per claims 1 and 28. See abstract, column 7, lines 58-59 and column 8, lines 29-32. The treatment is dried as required by claims 2 and 23 and the reinforcing fibers can form a strand which is

used to form mats and composite materials, per claims 11-13 and 32-34. See column 9, lines 63-65. The epoxy polyurethane is in the form of an aqueous dispersion or emulsion as required by claims 6-7 and 27-28. See column 3, lines 17-19. Regarding claims 6-7 and 27-28, the names "EPIREZ 3456" and "WITCOBOND W290H" have not been given any patentable weight because a trademark or tradename only identifies the source of the goods, and not the goods themselves. While Das teaches that other additional components can be included such as processing aids, wetting agents and the like, he does not specifically teach a filler.

Yamada teaches impregnated reinforcing fibers wherein a filler material such as calcium carbonate (per claims 10, 14-15, 31, and 35-36) may be added to the resin composition in order to reduce stickiness of the fibers (claims 18, 21). See column 1, lines 46-60 and column 6, lines 13-16. In addition, Yamada teaches that the calcium carbonate can be used in amounts within applicants' range as required by claims 16-17, 19-20 and 37-38. See Example 1.

It would have been obvious to modify the aqueous chemical treating composition of Das by including a calcium carbonate filler to reduce stickiness of the resultant treated fibers. As to claims 15 and 36, the name "GEORGIA MARBLE CALWHITE II" has not been given any patentable weight because a trademark or tradename only identifies the source of the goods, and not the goods themselves. Accordingly, the metes and bounds of claims 15 and 36 are limited solely to calcium carbonate filler. Regarding claims 3-5 and 24-26, Adizama teaches an aqueous coating composition comprising a thermoplastic polymer powder, surfactant, a polyurethane film former,

thickening agent and water. See abstract. The thickening agent is a water-soluble acrylamide polymer as required by claims 3-5 and 24-26. See Example 1. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of Das by adding an acrylamide thickener as taught by Adizama to result in a composition having good stability and good consistency. Regarding claims 5 and 36, the name "DREWFLOC 270" has not been given any patentable weight because a trademark or tradename only identifies the source of the goods, and not the goods themselves. Accordingly, the metes and bounds of claims 5 and 26 are limited solely to acrylamide thickener. Regarding the terminology of "string binder" as set forth in the preamble of claims 22-38, this language is not considered a limitation and is of no significance to the claim construction because the body of these claims fully and intrinsically set forth all of the limitations of the claimed invention. The preamble language of "a string binder" does not provide any distinct definition of any of the claimed invention's limitations, rather, merely states the purpose or intended use of said invention. MPEP 2111.02

Therefore, the combined teachings of Das, Adizama and Yamada would have rendered obvious the invention as claimed in present claims 1-7, 10-28 and 31-38.

Claims 8-9 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Das et al, 4,745,028 (Das) in view of PCT Publication WO 91/15434 (Adizama) and Yamada et al, 4,427,482 (Yamada) as applied above to claims 1-7, 10-28, and 31-38, further in view of "EPI-CURE 3253" Product data sheet and Hawley's Condensed Chemical Dictionary, Fourteenth Edition, page 366.

Das, Adizama, and Yamada are each as set forth above, but do not teach the specific curing agent set forth by applicants. Epoxy and polyurethane curing agents such as cyanoguanidine and mixed aromatic curing agents are well known in the art. It would have been an obvious expedient to the skilled artisan to use as the curing agent of Das, any known and commercially available curing agent, such as a mixed aromatic amine curing agent as contemplated by applicants, with the reasonable expectation of success of a known compound functioning in its known manner. It should be noted that the names "EPI-CURE 3253" and "AMICURE CG 1400" have not been given any patentable weight because a trademark only identifies the source of the goods and not the goods themselves.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jill M. Gray  
Examiner  
Art Unit 1774



jmg

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